

Abstract

Marshall J. Breger & Gary J. Edles

Established by Practice: The Theory and Operation of Independent Federal Agencies

52 Admin. L. Rev. 1111 (2000)

Abstract by Sanford A. Fine

In *Established by Practice: The Theory and Operation of Independent Federal Agencies*, Marshall Breger and Gary Edles survey the structure and internal operations of independent agencies, identify several similarities and differences among them, and address various recurring issues affecting these agencies. The authors specifically focus on agencies where at least one individual is a presidential appointee with protection against summary removal by some form of “for cause” restriction on presidential authority.

The authors begin by reviewing the creation of the Interstate Commerce Commission (ICC), and analyzing how the independent agency form evolved from historical contingency. The authors then analyze the emergence of the modern independent agency by discussing the organizational structure, appointment mechanisms, and removal procedures. Next, the authors comment on internal agency procedures, focusing on institutional decisionmaking, disqualification and recusals, and agency supervision of its members.

Breger and Edles conclude that there are structural tensions in the modern administrative state that acts to keep independent agencies alive. Since the administrative state is too expansive for the president to control it, and since Congress is too balkanized to have effective oversight, administrative state accountability suffers. The authors assert that further decentralization will occur within the independent agency realm, and this vacuum will be filled by corporations and government-sponsored enterprises.